



OFFICE OF ATTORNEY GENERAL  
CONSUMER PROTECTION AND ANTITRUST DIVISION  
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STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE OF NORTH DAKOTA EX REL.  
WAYNE STENEHJEM,  
ATTORNEY GENERAL,

Petitioner,

-VS-

**FORTUNE HI-TECH MARKETING, INC.**, a  
Kentucky Corporation ;  
**PAUL C. ORBERSON**, Individually;  
**JEFF ORBERSON**, Individually; and  
**THOMAS A. MILLS**, Individually,

Respondents.

**CEASE AND DESIST ORDER,  
NOTICE OF CIVIL PENALTY  
AND NOTICE OF RIGHT  
TO REQUEST A HEARING**

CPAT 090340.001

**To each of the individuals and entities identified below (hereinafter collectively "Respondents"):**

Fortune Hi-Tech Marketing, Inc.  
880 Corporate Drive, Suite 200  
Lexington, KY 40503-5400

Fortune Hi-Tech Marketing, Inc.  
c/o Jason Baker,  
General Counsel  
880 Corporate Drive, Suite 300  
Lexington, KY 40503-5400

Paul C. Orberson,  
President/Director  
Fortune Hi-Tech Marketing, Inc.  
880 Corporate Drive, Suite 300  
Lexington, KY 40503-5400

Jeff Orberson,  
COO  
Fortune Hi-Tech Marketing, Inc.  
880 Corporate Drive, Suite 300  
Lexington, KY 40503-5400

Thomas A. Mills,  
Vice President/CEO  
Registered Agent  
Fortune Hi-Tech Marketing, Inc.  
880 Corporate Drive, Suite 300  
Lexington, KY 40503-540

(including all of those entities' officers, directors, owners, agents, servants, employees and representatives as well as all other persons in active concert or participation with them, extending to all "doing business as" names, formal corporate names, fictitious names of any kind or any variations of the same)

## **BACKGROUND**

1. The Attorney General of North Dakota has a reasonable basis to believe Respondents have engaged in and are engaging in acts or practices declared unlawful by N.D.C.C. ch. 51-15, commonly referred to as the Consumer Fraud Law; N.D.C.C. ch. 51-02, commonly referred to as the Transient Merchant Law, N.D.C.C. ch. 51-18, commonly referred to as the Home Solicitation Sales Law, and North Dakota Pyramid Schemes Act, N.D.C.C. ch. 51-16.1. It is necessary and appropriate in the public interest and for the protection of consumers to restrain the Respondents' unlawful acts or practices.

2. Respondents are alleged to be a "transient merchant," as defined by N.D.C.C. §51-04-01(2). Respondent Fortune Hi-Tech Marketing is a network marketing

company. It purports to offer and sell to consumers a business and compensation plan designed to yield financial reward through the vehicle of network marketing. Respondents offer to sell to consumers a business model or opportunity, and purports to offer tools and support allowing consumers to grow their own business, through becoming a member of Respondents partner companies.

3. Respondents represent to consumers that if the consumers becomes a member of Fortune Hi-Tech Marketing's ("FHTM") partner companies, the consumer will become a middle person, introducing the products and services directly to customers, instead of spending money on advertising. Respondents further represents that the consumer, as a member, can earn money when a friend, family member or acquaintance uses a product or service through the consumer's FHTM business. It is believed that Respondents also represent that consumers, by purchasing this membership or business opportunity, can earn money without making any sales themselves.

4. Respondents are not licensed as a Transient Merchant and it appears that Respondents have engaged in sales activity in North Dakota without first obtaining the required transient merchant license pursuant to N.D.C.C. ch. 51-04;

5. Respondents engaged in sales activities in North Dakota subsequent to receiving notice from the Attorney General of the requirement of a transient merchant license and the prohibition against engaging in business activities without the required license. It appears that Respondents willfully and intentionally violated North Dakota law.

6. It is believed that Respondents are marketing, soliciting and selling merchandise to North Dakota consumers, without complying with all the provisions of North Dakota's Home Solicitation Sales statute, N.D.C.C. ch. 51-18.

7. It appears that Respondents may have established, operated, advertised and promoted a compensation plan at FHTM by which participants pay for the opportunity to receive compensation derived primarily from recruiting other participants rather than from the sale of goods, services or intangible property, in violation of North Dakota's Pyramid Schemes Act, N.D.C.C. ch. 51-16.1.

8. It appears that Respondents have engaged in violations of N.D.C.C. ch. 51-15 (the Consumer Fraud Law) when they misrepresented, expressly, impliedly or by omission of material facts, that they were authorized to conduct business in North Dakota when, in fact, they failed to be licensed as a Transient Merchant pursuant to N.D.C.C. ch. 51-04.

9. It appears that Respondents have engaged in violations of N.D.C.C. ch. 51-15 (the Consumer Fraud Law) by violating N.D.C.C. ch. 51-16.1 (the Pyramid Schemes Act) and by using misrepresentations or false promises in their promotional presentations and materials to induce consumers to pay money for the opportunity to recruit new participants and for the right to sell products.

10. The Attorney General made a request for information to Respondents on December 3, 2009, demanding that Respondent provide certain information about their business activities in North Dakota within five (5) days of the request, which response is due on December 10, 2009.

11. Each of the Respondents is engaged in a combination of two or more persons who have agreed to act together to inflict a wrong or an injury upon another, or who have agreed to act together to commit a lawful act using unlawful means to inflict a wrong or injury upon another, namely violation of North Dakota's Transient Merchant Law, N.D.C.C. ch. 51-04, North Dakota's Consumer Fraud Law, N.D.C.C. ch. 51-15,

North Dakota's Home Solicitation Sales Law, N.D.C.C. ch. 51-18, and North Dakota's Pyramid Schemes Act, N.D.C.C. ch. 51-16.1. In so doing, Respondents have committed acts in pursuit of the agreement and the agreement has proximately caused damage to North Dakota consumers.

12. Respondents are liable for their own misconduct and/or for directing others to engage in misconduct. See *e.g. Zimprich v. North Dakota Harvestore Sys., Inc.*, 419 N.W.2d 912, 914 (N.D. 1988); *Rickbeil v. Grafton Deaconess Hosp.*, 23 N.W.2d 247, 257 (N.D. 1946)("The general rule with reference to this feature is considered and set out in the great series of volumes of jurisprudence familiar to the courts. In 52 Am. Jur., 440, this rule is stated, 'It is a conceded general rule that all persons or entities are liable for torts committed by them, or by their agents while acting within the scope of their duties.'").

13. Respondents who are natural persons will additionally be subject to personal liability for corporate misconduct. *Hilzendager v. Skwarok*, 335 N.W.2d 768 (N.D. 1983)(quoting *Schriock v. Schriock*, 128 N.W.2d 852, 866 (N.D. 1964)("... but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.' Fletcher, Private Corporations Sec. 41 (1963 rev. vol.)"). The crime/fraud exception to the protections of corporate form has long been recognized in North Dakota, "neither law nor equity will ever recognize the right of a corporate entity to become the receptacle or cover for fraud or wrong based on deception for the purpose of defeating the right of innocent parties." *McFadden v. Jenkins*, 169 N.W. 151, 163 (N.D. 1918). See also *Danks v. Holland*, 246 N.W.2d 86 (N.D. 1976); *Family Center Drug v. North Dakota St. Bd. of Pharm.*, 181 N.W.2d 738, 745 (N.D. 1970).

## ORDER

**NOW, THEREFORE, IT IS ORDERED** pursuant to N.D.C.C. § 51-15-07 that Respondents, individually, and where applicable their officers, directors, owners, agents, servants, employees, contractors, representatives (extending to all "doing business as" names, formal corporate names, aliases, fictitious names of any kind or any variations of the same) as well as all other persons in active concert or participation with them, whether directly or indirectly, immediately **CEASE AND DESIST** from: 1) engaging in any sales or business activities in North Dakota, including soliciting, advertising or selling goods, services and/or merchandise as defined N.D.C.C. § 51-15-01(3), without a Transient Merchants license; 2) engaging in any sales or business activities in North Dakota, until and unless Respondents fully comply with the request for information made by the Attorney General on December 3, 2009, pursuant to N.D.C.C. §51-15-04; 3) making any misrepresentations or false or misleading statements or engaging in any deceptive practices in violation of N.D.C.C. ch. 51-15; 4) advertising, soliciting, or selling merchandise to North Dakota consumers without complying with the requirements in N.D.C.C. ch. 51-18; and 5) establishing, operating, advertising or promoting any compensation plan that would violate N.D.C.C. ch. 51-16.1. Respondents also shall immediately **CEASE AND DESIST** from issuing any invoices or bills and from taking, collecting or accepting any payments from North Dakota consumers, including, but not limited to, direct debits or withdrawals from North Dakota consumers' bank accounts, cash, checks, or credit card payments, for the sale of merchandise or other goods or services related to the sale of merchandise when the sale took place while Respondents were not in compliance with North Dakota law.

**YOU ARE NOTIFIED** that pursuant to N.D.C.C. § 12.1-09-03 a person is guilty of a criminal offense if he or she intentionally "alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability" in an official proceeding. As such, intentional destruction of any documents related to this matter may result in criminal prosecution.

#### **NOTICE OF CIVIL PENALTIES**

**YOU ARE FURTHER NOTIFIED** that pursuant to N.D.C.C. § 51-15-07 any violation of this Cease and Desist Order is subject to civil penalties not to exceed \$1,000 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-15 may result in additional civil penalties of not more than \$5,000 per violation. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-04 may result in additional civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-18 may result in additional civil penalties of not more than \$5,000 per violation and is a Class B misdemeanor. Any violation of this Order that also is a violation of N.D.C.C. ch. 51-16.1 may result in additional civil penalties of not more than \$5,000 per violation and is a Class A misdemeanor. Such penalties are separate and in addition to any civil penalties, costs, expenses, investigation fees, and attorney's fees pursuant to N.D.C.C. ch. 51-15 or any other applicable statute. Nothing in this Order is intended to limit or waive any rights and remedies available to the State of North Dakota or consumers.

#### **NOTICE OF RIGHT TO REQUEST HEARING**

**YOU ARE NOTIFIED** that pursuant to N.D.C.C. § 51-15-07 you may request a hearing before the Attorney General if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. Respondents have the right to be

represented by legal counsel at the hearing.

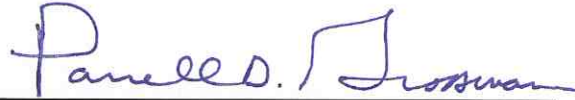
Dated this 10th day of December, 2009.

**STATE OF NORTH DAKOTA**

Wayne Stenehjem

Attorney General

BY:



Parrell D. Grossman, ID No. 04684

Assistant Attorney General

Director, Consumer Protection and  
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